

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Nautilus Insurance Company

Plaintiff,

vs.

TR Construction, Inc., et al.

Defendants.

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Case No. 5:09-CV-1949

Judge John R. Adams

MOTION TO DISMISS ST. MATTHEW CHURCH

The Plaintiff moves to dismiss this matter as to St. Matthew Church. The Dismissal is under Rule 41(a)(2), F.R.C.P., and will be without prejudice to refiling. It is only as to this Defendant. Cause for the same is shown hereinafter in the Memorandum in Support.

Respectfully submitted,

/s/ Gerald P. Duff

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Attorney for Plaintiff Nautilus Insurance Company

MEMORANDUM IN SUPPORT

The reasons for this Motion are that the main, and actually the only Defendant, TR Construction Company, is in default of Answer. A Motion and Application for Default Judgment are pending before this Honorable Court.

Second, St. Matthew stated in ¶7 of its Answer that it doesn't have a mortgage in the matter. There is, therefore, no need to proceed against this Defendant. St. Matthew is not

therefore needed in the case. Counsel for such Defendant, Mr. Solomon, has indicated they have no objection to the same and agree to such Order.

Wherefore, there would be no prejudice whatsoever to this party's dismissal. For this relief Plaintiff moves this Honorable Court.

Respectfully submitted,

/s/ Gerald P. Duff

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Attorney for Plaintiff Nautilus Insurance Company

CERTIFICATE OF SERVICE

Service of the foregoing was had under Rule 5(a)(2), F.R.C.P., by mailing a copy of the same by regular U.S. mail, postage prepaid, this 8th day of December, 2009 to: John W. Solomon, Esq., Vorys, Sater, Seymour and Pease LLP, 106 South Main Street, Suite 1100, Akron, OH 44308, counsel for St. Matthew Catholic Church, the only Defendant that has answered and appeared by counsel herein.

/s/ Gerald P. Duff